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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 29

FOREST BRITT PETER, *Petitioner*

vs.

UNITED STATES OF AMERICA

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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In the Supreme Court of the United States

OCTOBER TERM, 1963

No.

FOREST BRITT PETER, *Petitioner*

vs.

UNITED STATES OF AMERICA

Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Forest Britt Peter petitions for a writ of certiorari to review the judgment of the Court of Appeals for the Ninth Circuit entered in this case on October 30, 1963.

OPINIONS BELOW

The opinion of the court below (Appendix A, *infra*) is reported at 324 F.2d 173. The United States District Court for the Northern District of California, Southern Division, in entering its judgment of conviction from which appeal was taken to the court below, did not issue an opinion.

JURISDICTION

The decision of the court below was entered on October 30, 1963. A petition for rehearing was denied on December 10, 1963. By order of this Court, dated January 7, 1964 and signed by Mr. Justice Douglas, the time to file this petition was extended to January 24, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the exemption from military service for persons conscientiously opposed to participation in war, under Section 6(j) of the Universal Military Training and Service Act, requires a belief in Deity.

2. Whether, if the answer to the first question presented is in the affirmative, Section 6(j) is unconstitutional under the First and Fifth Amendments to the United States Constitution.

3. Whether the failure of petitioner, in the circumstances of this case, to report for a pre-induction physical examination is sufficient to sustain his conviction under Section 12(a) of the Universal Military Training and Service Act, irrespective of his qualification for exemption from military service under Section 6(j) of that Act.

STATUTES INVOLVED

The pertinent provisions of the United States Constitution and the Universal Military Training and Service Act (62 Stat. 604 *et seq.* (1948), 50 U.S.C. App. 451 *et seq.* (1958)), are set forth in Appendix B, *infra*.

STATEMENT

A. Proceedings before petitioner's Local Draft Board and the Appeal Board

Petitioner registered with his Local Draft Board in Hayward, California, on July 10, 1956 (Gov't. Exh. 1, p. 2).[1] Thereafter, on March 4, 1958, petitioner requested his Local Board to furnish him a form to apply for classification as a conscientious objector, which he completed and returned to the Board on March 8, 1958 (Gov. Exh. 1, p. 17-22). Petitioner responded to the question on the form which inquired as to his belief in a Supreme Being by stating, "It depends on the definition," and referring to an attached page, where he wrote (Gov't. Exh. 1, p. 20):

> Since human life is for me a final value, I consider it a violation of moral law to take human life. I think I have reached this conviction out of my reading of such writings as those of Blake (christian mystic), Emerson, Whitman, and more modern poets who have touched on the question.
>
> I consider this belief to be superior to my obligation to the state.
>
> Insofar as this conviction is religious, it has been best described by Rev. John Haynes Holmes as follows: "Religion is the consciousness of some power manifest in nature which helps man in the ordering of his life in harmony with its demands . . . [It] is the supreme expression of human nature; it is man thinking his highest, feeling his deepest, and living his best."

---

1. "Gov't Exh." refers to Government Exhibits introduced at the trial in the United States District Court. The record on appeal to the court below was not printed, and consists of the original record before the trial court, including exhibits introduced at the trial, and the reporter's transcript of testimony at the trial.

Government Exhibit #1 consists of petitioner's selective service file at the time it was forwarded to the United States Attorney's office for prosecution. Government Exhibit #2 consists of supplemental documents entered in petitioner's selective service file subsequent to referral of the case for prosecution, but prior to the filing of the indictment.

The Local Draft Board rejected petitioner's application, and classified him as 1-A. Thereafter, petitioner requested a hearing before the Local Board "through which I may state my beliefs and present new evidence and information", which request was granted (Gov't. Exh. 1, pp. 27, 28). In connection with the hearing, petitioner submitted the following written statement respecting his belief as to God (Gov't. Exh. 1, p. 31):

> "I have this God inside of me. To be truthful, I don't know if it's a long or short God or even a Superior God (much less a Supreme Being) and I have no idea what its sex is. I'm even worried about calling it God. After all a great deal of death has been done in the name of God.
>
> This God I have inside of me goes off every once in a while and opens me to the motions, to beauty and sadness in the universe. That is, now and again I feel the compulsion to meet the world around me. I'm filled with wonder, I'm possessed as it were, I feel so good I think I'm crazy. So my God isn't beyond me, it's within me and opens me to Godliness in the world."

The record contains only a brief summary of the proceedings at the hearing, prepared by the clerk of the Local Draft Board, stating that petitioner appeared with a supporting witness "to help him in explaining his case" (Gov't Exh. 1, p. 32).

Following the hearing, the Local Board reaffirmed its determination that petitioner should be classified as 1-A, but on August 13, 1959, forwarded his file to the Selective Service Appeal Board upon petitioner's expression of dissatisfaction with the ruling (Gov't. Exh. 1, pp. 33-35). In accordance with Section 6(j) of the Act, an investigation was made by the Department of Justice in connection with the appeal, and a hearing was conducted on February 29, 1960, before a hearing officer. In the course of the investiga-

tion, statements on petitioner's behalf were submitted by acquaintances, and petitioner also submitted a further statement explaining the nature and sources of his beliefs respecting war (Gov't. Exh. 1, pp. 50-60). The Department of Justice reported to the Appeal Board that the hearing officer had been told by petitioner that "he had no orthodox religious background", and had stated that he did not pray (Gov't. Exh. 1, pp. 40-41). The hearing officer, insofar as the report shows, did not question the sincerity of petitioner's beliefs, but concluded that petitioner "evidenced neither religious training and belief nor belief in a Supreme Being as defined in the Military Training and Service Act" (Gov't. Exh. 1, p. 42). The Department of Justice recommended that petitioner's "claim be not sustained by [the Appeal] Board" (*ibid.*).

On July 29, 1960, the Appeal Board furnished petitioner with a copy of the recommendation of the Department of Justice, and notified petitioner that he would be afforded opportunity to make a written reply thereto (Gov't Exh. 1, p. 61). In response petitioner submitted a lengthy letter stating, *inter alia* (Gov't, Exh. 1, pp. 69-73):

> I have never directly answered 'yes' or 'no' to your question 'Do you believe in a Supreme Being' because I do not know what you mean by the phrase . . . However, I'm moved by many of the elements in the world-in creation.
>
> You might say I believe in them. I believe in these elements because they are there . . . We say, that a tree is beautiful. But why? Because the tree moves us. The branches, the leaves, the very form of the tree, the forces it exemplifies. I do not choose to name this tree God as if that would explain its reason or essence. This is a very distinctive tree and deserves a new name and a reverence that is open to the endless number of things the tree tells us—of form, life and death, of ourselves; our own existence.

> I don't think this is lack of belief. I'm upheld by creation, finding ease as well as pain there ... I believe in elements of this creation like star or animal motion. And I'd work toward an understanding with them called living relationship or form of love.
>
> This is the conscious effort of my life and I have already suffered some regarding it ...

On November 18, 1960, the Appeal Board determined that petitioner's classification of 1-A should remain in effect. Thereafter, petitioner was ordered to report for a pre-induction physical examination on August 30, 1961. Petitioner wrote the Local Board that he would not appear for the examination because of his beliefs, and the examination was not given at the appointed time (Gov't Exh. 1, pp. 82, 84).

On November 22, petitioner was ordered to report for induction into military service (Gov't. Exh. 1, p. 87). Petitioner presented himself at the induction station as directed, but refused to be processed for induction (Gov't. Exh. 1, pp. 91-93). Petitioner's Record of Induction form shows, in an attached Report of Medical Examination, that some entries were made respecting medical data of petitioner, and that the original date for examination—August 30, 1961—was crossed out and the date of November 22, 1961, substituted in its place (Gov't Exh. 1, p. 94). In addition, there is stamped over the form's notation "PIP", presumably referring to pre-inductioin physical, the word "INDUCTEE" (*ibid.*). Apart from the foregoing, the record does not show to what extent, if any, a physical examination was given to petitioner at the time scheduled for his induction.

In January, 1962, petitioner's file was referred to the office of the United States Attorney in San Francisco, and in June of the same year petitioner wrote identical letters

to his Local Draft Board and to the California State Headquarters for Selective Service requesting permission to be given a physical examination (Gov't. Exh. 2, pp. 107, 112). The letters explained that the request was made on advice of counsel, to the end that petitioner "might better present my objection to war and opposition to the military institution at future hearings of my case" (*ibid.*). A similar request was made in a letter to the Director of Selective Service, General Hershey, dated July 6, 1962 (Def. Exh. A). To this letter was attached an additional letter from petitioner to General Hershey dealing with petitioner's beliefs respecting his objections to military service, which in many respects is repetitious of earlier statements. In part, the statement reads as follows (*ibid.*):

> I have never answered "yes" or "no" to the question "Do you believe in Supreme Being?", for several reasons. For one, I was not sure of the Government's definition of a Supreme Being and, as far as I know, the government has never defined the words "Supreme Being" in print or in any law . . . The nature of my belief is more complex and I must have more room to expand my thoughts and to express, or translate, my beliefs through the medium of language. I find this task additionally difficult because I place the stress of my belief on the products, the elements in creation, rather than on a reverence toward the possible Creator of these elements and mysteries of the universe.
>
> This reverence for the elements in the universe before that of the possible creator might be unorthodox, but it is not foreign to religious thought. Witness the writings of Buddha (those attributed to him and early followers), and of Lao Tzu as well as Christian Mystics like Boehme and Blake.
>
> . . . . . .
>
> I feel that one is not amis in terming my conviction "religious" in that it is based on vision and a dedica-

tion to that vision, and I feel that this vision and my commitment to it fits into a definite tradition if not into any specific historical group.

* * * * * * *

I'm motivated by what Albert Schweitzer calls a "reverence for life", I think of myself as a receptive organ through which the tragedy and beauty of the world are perceived.

* * * * * * *

The presence of other living beings in the universe sounds a call, presents a vision, a fact, a mysterious reality that I cannot deny and to which I feel the impulse to relate.

I view physical violence on the other hand as a denial of life.

* * * * * * *

My conviction is not based on intellectual conclusions alone, but is primarily based on the promptings of my heart and the sense of relationship with all living elements in nature."

Petitioner's requests for a physical examination were denied both by the Local Board and the California State Headquarters (Gov't. Exh. 2, pp. 114, 111).

B. Proceedings before the District Court

On September 26, 1962, petitioner was indicted under Section 12(a) of the Act on the ground that he "did, on the 22nd day of November, 1961 . . . knowingly refuse to submit himself to induction and be inducted into the Armed Forces of the United States . . ." Petitioner was thereafter tried without jury, the evidence consisting principally of his selective service file. Petitioner testified briefly at his trial with respect to his claim for conscientious objector's status as follows (Tr. Dist. Ct. pp. 25-26):

> I think the basic reason—my religious basis for my conscientious objection to war is a reference to all living things. I feel a relationship to all other living beings, and I feel called upon to respect them, and I could not kill them or engage in an institution such as the Armed Forces, which predicates this belief, which would lead one possibly in the service to commit such an act to kill.

Petitioner repeated his earlier statements that he was unable to make an unqualified answer to the question of whether he believed in a Supreme Being, and explained (*id.*, p. 28):

> I have also said that I couldn't possibly give the answer in just a yes or no question, because I think I have some right to define God or my religious beliefs in my own words.
>
> * * * * * * *
>
> I think that my actions are probably motivated most thoroughly by a feeling of relationship and love towards other human beings and other living objects in the world, and in seeing these other living objects. I can narrow it down closer; I can define it as a belief in the mystery of the heart of the essence being alive, and my respecting and loving this livingness in other objects and human beings.
>
> * * * * * * *
>
> I suppose you could call that a belief in the Supreme Being or God. These just do not happen to be the words I use.

Finally, in answer to a question on cross-examination as to his understanding of the term "religion", petitioner stated (*ibid.*):

> By 'religion'—I think in my own terms, religion is based on two things. Number one would be vision, a vision of reality in the world or the universe, and

second is conviction regarding that vision, the way a person reacts to his vision of reality.

At the close of the trial, the district court forthwith found petitioner guilty as charged in the indictment (*ibid.*, p. 35).

C. Proceedings before the Court below

The court below affirmed the conviction. As explained in its opinion, the court considered that the Local Board and the Appeal Board could reasonably have found that petitioner did not "manifest clearly and unequivocally a belief in a Supreme Being to Whom he owed obedience" (App. A., *infra*, p. 9). Quoting from its earlier decision in *Berman v. United States*, 156 F.2d 377, 380, 381, the opinion below states that the criterion for exemption under the Act is "'an individual's belief in his responsibility to an authority higher and beyond any worldly one'", and added that "'philosophy and morals and social policy without the concept of deity cannot be said to be religion in the sense of that term as it is used in the statute'" (App. A.; *infra*, pp. 8-9). Concluding that there was basis in the record for a finding that petitioner did not subscribe to a belief in a deity, the court below reasoned that petitioner's convictions were therefore "quite consistent with 'a merely personal moral code,' which is expressly excluded by Congress as a basis for classification as a conscientious objector" (App. A., p. 9).

REASONS FOR GRANTING THE WRIT

1. The court below interprets the provision of Section 6(j) of the Act which requires "belief in relation to a Supreme Being" for classification as a conscientious objector to prescribe a belief in Deity. Further, in concluding that Congress has written "the concept of Deity" into the statutory exemption, the court below equates the terms

"God" and "Supreme Being", and holds that beliefs which do not accept God do not "comport . . . with the standard or accepted understanding of the meaning of 'Religion' in American society", and constitute rather "'a merely personal moral code'" (*infra*, pp. 8, 9). It was on this ground that the conviction of petitioner was affirmed, for the court ruled—and we do not challenge the correctness of the ruling—that the record permits the inference that petitioner does not believe in anthropomorphic God.[2]

The meaning thus attributed by the court below to Section 6(j) of the Act is in conflict with the interpretation given the same language by the Court of Appeals for the Second Circuit in *United States vs. Jakobson*, ... F.2d ....., decided November 22, 1963, 32 L.W. 2257. The personal beliefs of the claimant in the *Jakobson* case were similar to those of petitioner here, at least to the extent that they were grounded in a personally conceived religion which did not appear to accept the existence of anthropomorphic God. The Second Circuit reasoned that a refusal to invoke the exemption of Section 6(j) on this ground would raise a serious constitutional doubt, and concluded that the "Supreme Being" test was satisfied where, as with petitioner

2. There is no suggestion in petitioner's selective service file that his convictions against service in the armed forces were other than sincere. The Local Board did not explain the grounds of its denial of petitioner's request for exemption, but the Department of Justice reported to the Appeal Board that its hearing officer had concluded that petitioner was not exempt because he had not "evidenced . . . religious training and belief in a Supreme Being as defined in the Military Training and Service Act" (Gov't. Exh. 1, p. 42). Nothing in the report challenges petitioner's sincerity, and the selective service file is replete with statements and evidence in support of petitioner's sincerity. The decision below assumes that petitioner was "absolutely sincere" (App. A., *infra*, p. 6). The observation of the court below (App. A., *infra*, p. 9) that petitioner, at his trial, had "reluctantly and grudgingly stated that his beliefs might be construed as a belief in a Supreme Being" refers not to the sincerity with which petitioner held his views, but rather to his reluctance to characterize them as a belief in a Supreme Being.

in the present case, the belief in question is essentially religious in character, whether or not grounded upon the existence of Deity. As the Second Circuit observed, "We cannot believe that Congress . . . meant to . . . require lay draft boards and personnel of the Department of Justice to pass on nice theological distinctions . . ." .....F.2d .....

The conflict between the Second and Ninth Circuits presents a question of substantial importance in the administration of the Act. There is a marked difference in the scope of Section 6(j)'s application between an interpretation which restricts the exemption to individuals who believe in God and an interpretation which includes as well individuals who do not acknowledge the existence of God, but who hold sincere religious convictions against service in the armed forces. Resolution of the conflict is essential to assure uniform and proper application of Congressional policy respecting the treatment of the latter class of persons. This class of persons very frequently serve jail sentences in deference to their beliefs, a penalty which is not authorized as to petitioner or others of like persuasion if the *Jakobson* decision is correct.

2. The interpretation given to Section 6(j) by the court below is premised on its conclusion reached in earlier decisions that religion necessarily connotes a faith in God. The court's view is too restricted. As observed by this Court, "Among religions in this country which do not teach what would generally be considered a belief in the existence of God are Buddhism, Taoism, Ethical Culture, Secular Humanism and others". *Torcaso vs. Watkins*, 367 U.S. 488, 495, n. 11. See also the statement of Judge Augustus Hand in *United States vs. Kauten*, 133 F.2d 703, 708 (C.A. 2). Accordingly, if the exemption in Section 6(j) of the Act properly encompasses conscientious opposition to military

service grounded generally on sincerely held religious beliefs, the court below erred in distinguishing between classes of religious beliefs to which the exemption is applicable.

As pointed out by the Second Circuit in *United States vs. Jakobson, supra*, and as shown below, an interpretation of Section 6(j) which is narrower than the scope of the First Amendment's guarantee of the free exercise of religion raises a serious doubt as to its constitutionality. Accordingly, every effort should be made to construe the statutory language "in the candid service of avoiding a serious constitutional doubt". *United States vs. Rumley*, 345 U.S. 42, 47. This may be accomplished by reading the statutory prescription of "an individual's belief in a relation to a Supreme Being" to encompass all religious beliefs that are protected by the First Amendment. Such a reading does not unduly strain the Congressional language. The traditional basis for extending statutory grace to conscientious objectors is a recognition of sincerely held religious convictions, without specification of the substantive content of such convictions, or their authorization by any particular sect. The term "Supreme Being", while it may well have reference to God in a conventional Christian sense, is not so precise as to preclude religious tenets which are grounded in a personal response of conscience to a creative force in the universe. Views of this nature, to which petitioner has subscribed, may properly be described as a "belief in a relation to a Supreme Being involving duties superior to those arising from any human relation". Section 6(j) of the Act.

3. Section 6(j) of the Act, as read by the court below, is unconstitutional in that it imposes an unwarranted burden on the free exercise of religion, and makes an unreasonable classification of religious views. By equating the Supreme

Being test with a belief in Deity, the court below interprets Section 6(j) to extend the allowances of that provision to individuals whose religious beliefs accept the existence of God, but not to those whose religious beliefs deny the existence of God. This is a distinction which cannot stand under the First or Fifth Amendments. The constitutional guarantee of the free exercise of religion encompasses faiths which do not teach the existence of God as well as to those which are premised on the existence of God. *Torcaso v. Watkins*, 367 U.S. 488, 495. To discriminate in the grant of legislative grace in favor of one kind of religion as against another is to violate the principle of maintaining "'a wall of separation between church and State,'" and is constitutionally forbidden. *Everson v. Board of Education*, 330 U.S. 1, quoting Thomas Jefferson. See also, *Sherbert v. Verner*, 83 Sup. Ct. 1790; *Engel v. Vitale*, 370 U.S. 421; *Abington School District v. Schempp*, 374 U.S. 283.[3]

There is no countervailing governmental interest that justifies the restriction upon the scope of the religious exemption which the court below has read into Section 6(j). It cannot be maintained that individuals whose religious views reject the existence of God are necessarily less sincere in opposing military service on religious grounds than those who believe in God. The single effect of extending the religious exemption only to those who believe in God is to

3. On the day that this petition was sent to the printer, the New York Times, Western Edition (January 21, 1964, p. 1:7) reported that the Court of Appeals for the Second Circuit has declared Section 6(j) of the Act unconstitutional insofar as it requires, as a condition for exemption, a belief in a Supreme Being. *United States v. Seeger*, No. 28346 (C.A. 2). We have not had opportunity to read the decision, but it would appear that the Second Circuit's ruling squarely supports the position of petitioner, and is in conflict with the decision below.

place governmental support in a matter of substantial importance behind some religious teachings as against others. This it cannot constitutionally do. *Sherbert v. Verner*, 83 Sup. Ct. 1790.

Although the constitutional issue was not discussed in the opinion below, and was apparently not considered by the court, it is properly presented on the record of this case. Thus, it was petitioner's contention in the trial court and in the court below that Section 6(j), properly construed, extended the religious exemption from military service to beliefs of the character held by petitioner. By rejecting this contention, and reading the exemption language of Section 6(j) to presuppose a belief in God, the decision below engendered a serious constitutional issue. Following issuance of the decision, petitioner filed a petition for rehearing en banc, pointing out that the court's determination raised serious constitutional doubts respecting Section 6(j) of the Act, and requested opportunity to brief and argue the question. The petition for rehearing was denied without opinion, thereby making the constitutional question appropriate for review by this Court. The constitutional question, moreover, is inherent in a full consideration of the statutory interpretation question, which was fully argued at all stages of this proceeding. Indeed, the constitutional considerations constitute the most compelling reason for interpreting Section 6(j) in the manner urged by petitioner.

4. The third question presented by this petition, relating to petitioner's failure to report for a pre-induction physical examination in accordance with the notice given him, was pretermitted by the court below as unnecessary to a determination of the case. The question is not of sufficient public importance independently to warrant review by this

Court, but is preserved in order to permit the Court to deal with all aspects of the case and avoid further proceedings before the court below. This course is justified on the ground that the record cannot fairly support a determination that petitioner's conviction is sustainable by reason of his failure to report for a pre-induction physical examination.

Thus, the matter of the physical examination cannot properly be made a part of the case against petitioner, for it is not within the indictment. The critical language of the indictment alleges only that petitioner "knowingly refuse[d] to submit himself to induction and [to] be inducted into the Armed Forces of the United States . . ." The sole evidence in support of this charge is that petitioner appeared in response to the induction notice, but refused to be inducted. It is plain, moreover, that the Selective Service officials did not regard the absence of a physical examination as precluding induction, for petitioner was notified to report for induction following the scheduled date of the examination, and the Report of Medical Examination pertaining to petitioner indicates on its face that he was to be inducted irrespective of the absence of the examination (*supra*, p. 6). In addition, the Delinquent Registrant Report (Gov't Exh. 1, p. 101) which was forwarded to the United States Attorney to indicate the basis for possible criminal proceedings, states only that petitioner "Failed to submit to induction Nov. 22, 1961". The physical examination was scheduled for August 30, 1961. Finally, petitioner's attempts to submit himself to the physical examination following the scheduled induction date were rejected (*supra*, p. 7).

From the foregoing, it is clear that petitioner's failure to report for the physical examination is not an offense with which he has been charged in this case, and that in any

event the Selective Service officials waived the requirement for purposes of inducting petitioner into the armed forces. Accordingly, the conviction should be reversed and the indictment dismissed if either of the first two question presented are answered in petitioner's favor.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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January, 1964.

Appendix A

United States Court of Appeals for the Ninth Circuit

No. 18,546—Oct. 30, 1963

FOREST BRITT PETER, *Appellant.*

vs.

UNITED STATES OF AMERICA, *Appellee.*

Appeal from the United States District Court for the Northern District of California, Southern Division.

Before: MADDEN, Judge of the Court of Claims,* and HAMLIN and BROWNING, Circuit Judges

HAMLIN, Circuit Judge:

This is an appeal from a conviction of violation of section 12(a) of the Universal Military Training and Service Act, 62 Stat. 622 (1948), 50 U.S.C. App. § 462(a) (1958). Appellant, Forest Britt Peter, having waived a jury trial, was found guilty of failure to submit to induction into the armed forces by the United States District Court for the Northern District of California, and was committed to the custody of the Attorney General for six months. Jurisdiction of this court is based on 28 U.S.C. § 1291 (1958).

On July 10, 1956, appellant registered for the Selective Service System with Local Board No. 53 in Hayward, Cali-

*Sitting by designation.

fornia. On May 27, 1957, he completed and returned the standard classification questionnaire. He did not sign section VII of that questionnaire, relating to conscientious objector status, but submitted with the questionnaire a quotation from a poem which expressed opposition to war and a statement of his own concurring with the quotation.[1] On March 10, 1958, the local board received from him a completed SSS Form 150 relating to conscientious objector status. In answer to question 1 in series II, "Do you believe in a Supreme Being?," he answered, "It depends on the definition. See 2 below." Question 2 of the series inquires as to the nature and quality of the belief, question 3 as to its source, and question 5 as to the circumstances, if any, in which force could be used; appellant referred to a separate sheet on which these questions were answered.[2] He stated he was not a member of a religious sect or organization.

---

1. . . . . so in plain English:
I am opposed to all war.
I don't believe human beings should kill each other.
I am opposed to all violence . . . for whatever reason.
I believe that wars will only end when men refuse to murder one another—for whatever reason.
I believe these things as a man and as a revolutionist. For I believe wars will only end when the present murderous forms of society are allowed to die—and all men are at last permitted to live together as brothers.

—from An Astonished Eye Looks out of the Air
—by Kenneth Patchen

I concur with the statements of Mr Patchen that are listed above.

FOREST BRITT PETER
May 22, 1957

Portland
Oregon

2. Series II.—Religious Training and Beliefs
2. Since human life is for me a final value, I consider it a violation of moral law to take human life. I think I have reached this conviction out of my reading of such writings as those of

On July 10, 1959, the local board by a 2-to-0 vote classified appellant 1-A. On August 3, 1959, appellant appeared at a hearing before the local board where he substantially reiterated the views previously stated. The local board determined by a 2-to-0 vote not to open the case, and a notice of classification was mailed to appellant on August 4. On August 7, appellant wrote a letter to the board which reads as follows:

"Dear Sirs,

"Thank you for your time the other night at the hearing. I'm sorry you were unable to classify me as a Conscientious Objector.

"The decision however, was not a surprise considering my lack of 'proof' and your lack of moral courage.

"I just hope the war you support won't kill us all in the next few years.

"To the future,

"Forest Britt Peter."

Blake (christian mystic), Emerson, Whitman, and more modern poets who have touched on the question.

I consider this belief to be superior to my obligation to the state.

In so far as this conviction is religious, it has been best described by Rev. John Haynes Holmes as follows: "Religion is the consciousness of some power manifest in nature which helps man in the ordering of his life in harmony with its demands . . . (it) is the supreme expression of human nature; it is man thinking his highest, feeling his deepest, and living his best."

3. I would say that the source of my conviction concerning the sacredness of human life and the human spirit has been my experience and study in our democratic american culture, with its values derived from the western religious and philosophical tradition. As I have indicated above, I feel that I have learned of the values of this tradition through personal reading and meditation rather than through experience in any organized groups.

6. The use of violence (physical force) comprises the ends one seeks in action. I consider war to be the greatest example of this. The use of non-violence in the freeing of India and the Montgomery bus strike is an example of the kind of force I do believe in.

FOREST BRITT PETER
3/10/58

The clerk of the local board interpreted this letter as a request for appeal and forwarded the file to the appeal board on September 9. On October 8, the Appeal Board for the Northern District of California "tentatively determined that the registrant should not be classified in Class I-O or in a lower class," and forwarded the file to the Justice Department for investigation and hearing under section 6(j) of the Universal Military Training and Service Act, 62 Stat. 609 (1948), as amended, 50 U.S.C. App. § 456(j) (1958). On July 29, 1960, the Conscientious Objector Section of the Justice Department recommended to the appeal board that appellant's claim not be sustained, and a copy was mailed to appellant together with a letter advising him that he had thirty days within which to reply to the recommendation.[3] Appellant's reply was a long letter alleging inaccuracies and irrelevancies in the hearing officer's report together with a lengthy dissertation on his beliefs, their nature, quality, and source. On November 18, 1960, the appeal board by a 5-to-0 vote continued the classification of I-A.

On July 20, 1961, appellant was ordered to report for a pre-induction physical examination scheduled for August 30. Appellant replied with a letter dated August 15 which reads as follows:

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3. "The Hearing Officer reported that he told the registrant that belief in a Supreme Being was required and that at no time did the registrant suggest that he had a belief in a Supreme Being; that in answering the Hearing Officer's question, 'Are you prayerful?' the registrant had stated, 'No, I don't pray.' "

* * *

"The Hearing Officer concluded that the registrant evidenced neither religious training and belief nor belief in a Supreme Being as defined in the Military Training and Service Act and the Hearing Officer recommended that the claim of the registrant, based upon grounds of conscientious objection, be not sustained."

"Dear Sirs,

"I will not appear for my Armed Forces Physical Examination August 30th, In accordance with my previously stated views and beliefs as a conscientious objector."

Appellant also forwarded a letter dated August 15, 1961.[4] Appellant was then ordered to report on November 22 for induction as a delinquent. He replied with a letter to the local board dated October 16 as follows:

"I recently received from you a notice of delinquency for my failure to report for an Armed Forces Physical Examination on August 30, 1961. I do not consider myself delinquent. I remain as before, a conscientious objector to war and to all military institutions. I am a proponent of non violent action and reaction with other human beings, and I could not and will not participate in a physical examination whose purpose is to define my fitness for service in the *Armed* Forces.

"Once again,

"Forest Britt Peter."

On advice of counsel, however, appellant reported to the Armed Forces Recruiting Station in Oakland, California, on the appointed day, and there refused to be processed for induction. He was not given a physical examination at that time. Appellant on later dates submitted letters to the local board, the California State Headquarters, and the Director of the Selective Service System, General Hershey, requesting a physical examination, with the avowed purpose of avoiding the effect of the doctrine of exhaustion of administrative remedies. These requests were denied.

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4. The letter was almost an exact copy of the letter set out in note 1, *supra*.

On September 26, 1962, appellant was indicted for refusing to submit to induction and was tried and found guilty by the district court without opinion on November 16, 1962.

The issues in this case are: (1) Whether appellant qualifies as a conscientious objector; and (2) whether appellant was precluded from raising the defense because he failed to exhaust his administrative remedies.

In *Estep v. United States*, 327 U.S. 114, 122-23 (1946), the Supreme Court held that "the decisions of the local boards made in conformity with the regulations are final even though they may be erroneous. The question of jurisdiction of the local board is reached only if there is no basis in fact for the classification which it gave the registrant." Appellant contends that there was no basis in fact for the classification given him on the grounds that there is no evidence in the record that anyone at any time questioned the sincerity of his beliefs. The government contends that the local board and the Justice Department's hearing officer had the opportunity to observe the demeanor and attitude of the appellant in his appearances before them and that their refusals to classify him as a conscientious objector show some doubt as to his sincerity. There is some merit in the government's contention. However, even assuming that appellant was absolutely sincere, the record demonstrates that there was a basis in fact for the board's determination that he did not meet the statutory requirements for a conscientious objector.[5]

Appellant concedes that exemption from service as a conscientious objector is not a matter of constitutional right but of legislative grace. To qualify for such a classification, a

5. Appellant's contention that this case is "on all fours" with Parr v. United States, 272 F.2d 416 (9th Cir. 1959), is in error. The facts in the *Parr* case are entirely different.

registrant must meet the standards set forth by Congress in section 6(j) of the Universal Military Training and Service Act, 62 Stat. 609 (1948), as amended, 50 U.S.C. App. § 456(j) (1958):

> "Nothing contained in this title . . . shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, *by reason of religious training and belief*, is conscientiously opposed to participation in war in any form. *Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code.*" (Emphasis added.)

Appellant contends that he meets the definition. His argument is that his beliefs have a religious foundation. In support of this, he stated at his trial:

> "A. I think my actions are probably motivated most thoroughly by a feeling of relationship and love towards other human beings and other living objects in the world, and in seeing these other living objects. I can narrow it down closer; I can define it as a belief in the mystery of the heart of them, the essence of being alive, and my respecting and loving this livingness in other objects and human beings."
>
> "Q. Well, now, in relation to the question of a Supreme Being—"
>
> "A. I suppose you could call that a belief in the Supreme Being or God. These just do not happen to be the words I use."

In *Berman v. United States*, 156 F.2d 377, 380 (9th Cir.), *cert. denied*, 329 U.S. 795 (1946), this court defined the standard set forth in the predecessor to this act as follows:

"It is our opinion that the expression 'by reason of religious training and belief' is plain language, and was written into the statute for the specific purpose of distinguishing between a conscientious social belief, or a sincere devotion to a high moralistic philosophy, and one based upon an individual's belief in *his responsibility to an authority higher and beyond any worldly one.*" (Emphasis added.) The court also quoted from *United States v. Macintosh*, 283 U.S. 605, 633-34 (1931) (Hughes, C.J., dissenting), that "the essence of religion is belief in a *relation to God involving duties superior* to those arising from any human relation." (Emphasis added.) It is true that when the *Berman* case was decided, there was no sentence in the statute defining "religious training and belief." However, the present statute does contain such a definition, and it is by no means repugnant to the *Berman* definition. In fact, it adopts almost verbatim the wording from Mr. Chief Justice Hughes's dissent in *Macintosh* which the *Berman* court quoted with approval, changing only the word "God" to "a Supreme Being." In *George v. United States*, 196 F.2d 445, 451 (9th Cir.), *cert. denied*, 344 U.S. 843 (1952), this court in reaffirming the definition previously used stated that "it is evident that the definition which the Congress introduced into the 1948 Amendment comports with the spirit in which 'Religion' is understood generally, and the manner in which it has been defined by the courts. It is couched in terms of the relationship of the individual to a Supreme Being, and comports with the standard or accepted understanding of the meaning of 'Religion' in American society." Appellant has made no good argument as to why the statutory definition should be overruled, and, indeed, it is far beyond the power of this court to change the definition placed in the act by Congress.

It is significant that nowhere in the record of the proceedings before the administrative bodies did appellant manifest clearly and unequivocally a belief in a Supreme Being to Whom he owed obedience. When asked directly, "Do you believe in a Supreme Being?," he answered, "It depends on the definition." Later he referred to the act of killing as "a violation of moral law." Determination of his meaning and of his demeanor and attitude were functions of the administrative bodies, and it cannot be said that they were unreasonable in their determination. Such statements were quite consistent with "a merely personal moral code," which is expressly excluded by Congress as a basis for classification as a conscientious objector. As was stated in the *Berman* case, 156 F.2d at 381, "There are those who have a philosophy of life, and who live up to it. There is evidence that this is so in regard to appellant. However, no matter how pure and admirable his standard may be, and no matter how devotedly he adheres to it, his philosophy and morals and social policy without the concept of deity cannot be said to be religion in the sense of that term as it is used in the statute." It was not until his trial for violation of the act that appellant reluctantly and grudgingly stated that his beliefs might be construed as a belief in a Supreme Being.

We hold there was ample basis in fact for the determination by the selective service board that appellant's claim for exemption did not come within the language of the statute.[6]

Judgment affirmed.

(Endorsed) Opinion Filed Oct. 30, 1963.

Frank H. Schmid, Clerk.

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6. By reason of our holding against appellant on this issue it is not necessary for us to consider the issue of whether or not he failed to exhaust his administrative remedies.

Appendix B

The relevant provisions of the Universal Military Training and Service Act, 50 U.S.C. App. 451, *et seq.*, are as follows:

Section 6(j), 50 U.S.C., App. 456(j):

> "Nothing contained in this title [sections 451-454 and 455-471 of this Appendix] shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board, shall, if he is inducted into the armed forces under this title [said sections], be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) [section 454(b) of this Appendix] such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title [section 462 of this Appendix], to have knowingly failed or neglected to perform a duty required of him under this title [sections 451-454 and 455-471 of this Appendix]. Any person claiming exemp-

tion from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title [said sections], he shall be assigned to noncombatant services as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) [section 454(b) of this Appendix] such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails or neglects to obey any such order from his local board shall be deemed, for the purposes of section 12 of this title, to have knowingly failed or neglected to perform a duty required of him under this title [sections 451-454 and 455-471 of this Appendix]."

* * * * * * *

Section 12(a), 50 U.S.C., App. 462(a):

"(a) Any member of the Selective Service System or any other person charged as herein provided with the duty of carrying out any of the provisions of this title [sections 451-454 and 455-471 of this Appendix], or the rules or regulations made or directions given

thereunder, who shall knowingly fail or neglect to perform such duty, and any person charged with such duty, or having and exercising any authority under said title [said sections], rules, regulations, or directions who shall knowingly make, or be a party to the making, of any false, improper, or incorrect registration, classification, physical or mental examination, deferment, induction, enrollment, or muster, and any person who shall knowingly make, or be a party to the making of, any false statement or certificate regarding or bearing upon a classification or in support of any request for a particular classification, for service under the provisions of this title [said sections], or rules, regulations, or directions made pursuant thereto, or who otherwise evades or refuses registration or service in the armed forces or any of the requirements of this title [said sections], or who knowingly counsels, aids, or abets another to refuse or evade registration or service in the armed forces or any of the requirements of this title [said sections], or of said rules, regulations, or directions, or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title [said sections], or rules, regulations, or directions made pursuant to this title [said sections], or any person or persons who shall knowingly hinder or interfere or attempt to do so in any way, by force or violence or otherwise, with the administration of this [said sections] or the rules or regulations made pursuant thereto, or who conspires to commit any one or more of such offenses, shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment, or if subject to military or naval law may be tried by court martial, and, on conviction, shall suffer such punishment as a court martial may direct. No person shall be tried by court martial in any

case arising under this title [said sections] unless such person has been actually inducted for the training and service prescribed under this title [said sections] or unless he is subject to trial by court martial under laws in force prior to the enactment of this title [June 24, 1948]. Precedence shall be given by court to the trial of cases arising under this title, and such cases shall, upon request of the Attorney General, be advanced on the docket for immediate hearing."

The relevant provisions of the Constitution of the United States are as follows:

Amendment I.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

* * * * * * *

Amendment V.

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."